

North Dakota Office of State Tax Commissioner
Form 40X Amended Corporation Income Tax Return



L02
(Rev. 2002)

Calendar Year or Fiscal Year beginning _____, and ending _____

Name _____ Federal employer identification no. _____

Mailing address _____ Name the original Form 40 was filed under _____

City, State, Zip Code _____ Phone number _____ Reason for changes:
☐ RAR ☐ NOL ☐ Other _____

Income and deductions	A As originally reported or as adjusted	B Net change increase or (decrease)	C Correct amount
1 Income _____ Check the box used for the original return filing method a. <input type="checkbox"/> b. <input type="checkbox"/> b1. <input type="checkbox"/> b2. <input type="checkbox"/> c. <input type="checkbox"/> d. <input type="checkbox"/>	1 _____	(M) _____	_____
2 Total additions _____	2 _____	(N) _____	_____
3 Total subtractions (See instructions) _____	3 _____	(P) _____	_____
3a Allocable income less related expenses (See instructions) _____	3a _____	(Q) _____	_____
4 N.D. apportionable income (Add Lines 1 and 2, then subtract lines 3 and 3a) _____	4 _____		_____
5 North Dakota apportionment factor _____	5 _____	(R) _____	_____
6 Income apportioned to North Dakota (line 4 multiplied by line 5) _____	6 _____		_____
7 Income allocated to North Dakota less related expenses _____	7 _____	(S) _____	_____
8 North Dakota income (Add lines 6 and 7) _____	8 _____		_____
9 Federal tax deduction _____	9 _____	(O) _____	_____
10 Exemption for new and expanding business _____	10 _____	(A) _____	_____
11 Renaissance zone income exemption(s) (See instructions) _____	11 _____	(U) _____	_____
12 N.D. income after federal tax deductions and income exemptions (Subtract Lines 9, 10 and 11 from Line 8) _____	12 _____		_____
13 North Dakota net operating loss deduction (See instructions) _____	13 _____	(T) _____	_____
14 Balance (Subtract line 13 from line 12) _____	14 _____		_____
15 Recapture of federal alternative minimum tax _____	15 _____	(E) _____	_____
16 N.D. taxable income (Subtract line 15 from line 14) _____	16 _____	(F) _____	_____
Payment due or refund			
17 Regular income tax due for amount on Line 16, Column C (See tax rate table below) _____		(C) 17	_____
18 Alternative minimum tax due _____		(B) 18	_____
19 Total tax liability (Add lines 17 and 18) _____		19	_____
20 Total North Dakota income tax credits (See instructions) _____		(Y) 20	_____
21 Net tax liability (Subtract line 20 from line 19) _____		(G) 21	_____
22 Net tax liability previously paid after credits _____		(H) 22	_____
23 If line 21 is greater than line 22, enter difference as Balance Due _____		(J) 23	_____
a. Interest and penalty for Balance Due on line 23 (See instructions) _____		(I) 23a	_____
b. Total Payment Due (Add lines 23 and 23a. No payment under \$5) _____		23b	_____
<div>If payment is to be made by Electronic Funds Transfer, check this box <input type="checkbox"/> and enter date of payment _____</div>			
24 If line 22 is greater than line 21, enter difference as Overpayment _____		(D) 24	_____
a. Interest for Overpayment on line 24 (See instructions) _____		(I) 24a	_____
b. Amount to be Refunded (Add lines 24 and 24a. No refund under \$5) _____		24b	_____

I declare under the penalties of North Dakota Century Code § 12.1-11-02, which provides for a Class A misdemeanor for making a false statement in a governmental matter, that I have filed an original return and that this amended return, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Date: _____ Signature of Officer: _____ Title: _____
Date: _____ Signature of Preparer: _____ Address: _____

Mail to: Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, North Dakota 58505-0599

Tax Rate Table
(For taxable years beginning on or after January 1, 1983)

(Contact Office of State Tax Commissioner For Rates of Previous Years)

If the amount on Line 16 is not over \$3,000	3%
\$ 3,000 to \$ 8,000	\$ 90.00 plus 4.50% of excess over \$ 3,000
\$ 8,000 to \$20,000	\$ 315.00 plus 6.00% of excess over \$ 8,000
\$20,000 to \$30,000	\$1,035.00 plus 7.50% of excess over \$20,000
\$30,000 to \$50,000	\$1,785.00 plus 9.00% of excess over \$30,000
Over \$50,000	\$3,585.00 plus 10.50% of excess over \$50,000

"Buy North Dakota Products"

PLEASE DO NOT WRITE IN THIS SPACE

General instructions

Who must file

A North Dakota Amended Corporation Income Tax Return, Form 40X, must be filed if:

- An amended federal income tax return is filed;
- Federal taxable income or federal income tax liability is changed as a result of a federal audit;
- A corporation's North Dakota income is changed as a result of a North Dakota loss carryback;
- The corporation wishes to correct an error discovered on a previously filed return; or
- The corporation receives a refund of federal income tax which was deducted on a previously filed return.

Information relating to an amended return can be found in North Dakota Century Code §§ 57-38-38 and 57-38-40.

How to prepare an amended return

In order to file a complete Form 40X, a corrected Form 40, page 1 and supporting schedules, for the year being amended must be prepared.

Complete Form 40X using specific instructions below and attach the corrected Form 40, Page 1,

and ONLY the North Dakota Schedules FACT, FACT-1, SA, CR, FTD, TC, WE, WW, AMT-C and/or AMT-R which have been corrected. Use forms and schedules from the tax booklet for the year being amended.

Where to obtain forms

Forms, schedules and instructions may be obtained by contacting the Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599, or by calling 701-328-2046.

Obtain North Dakota tax forms, send messages, and find other information on the Office of State Tax Commissioner's Web site. The address is www.ndtaxdepartment.com.

For the speech and hearing impaired, call Relay North Dakota at 1-800-366-6888 and ask for 1-701-328-2046.

Federal attachments required

A complete copy of the amended federal return or Federal Form 1139 or Federal Revenue Agent Report, must be attached to the Form 40X.

In addition, if the corporation is included in a consolidated federal return, the following must be attached:

- A copy of the corporation's amended pro forma separate company federal return;
- Pages 1-4 of the amended consolidated federal return; and
- The schedule of gross income and deductions, by company, which supports the amended consolidated taxable income.

Where to file

Completed returns should be mailed to the Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599.

Payment of tax

If tax due (*including interest and penalty*) is less than \$5.00, payment need not be made. If tax is due, the total payment due must be paid when the return is filed.

Payment may be made by check or money order to the North Dakota State Tax Commissioner. Payment may also be made by Electronic Funds Transfer (EFT). See the department's web page at www.ndtaxdepartment.com for more information.

This return is incomplete without all required state and federal attachments

Specific line instructions

Lines 3 and 3a

- For taxable years beginning **after** December 31, 1988, the amount of net nonbusiness (*allocable*) income is included in Total Subtractions on line 3.
- For taxable years beginning **before** January 1, 1989, enter the amount of net nonbusiness (*allocable*) income on line 3a.

Line 11

If the corporation is claiming exempt income as a result of the Renaissance Zone Act, contact the Office of State Tax Commissioner for information about exempt income to report on this line.

Line 13

The North Dakota net operating loss deduction allowed on the Form 40X is the amount of the accumulated net operating loss less any previously deducted loss carryback or carryforward. Only a state net operating loss which occurs when a corporation does business in North Dakota is allowed as a state carryback or carryforward. Additional information is contained in N.D.C.C. § 57-38-01.3(3) and North Dakota Administrative Code § 81-03-05.1-07.

The state loss is carried back or forward as follows:

For taxable years beginning on or after January 1, 1993.

- A state net operating loss must be carried back and carried forward for the same period as a federal loss. However, a corporation may elect to forego the carryback period and carryforward the entire state loss. To elect to forego the carryback period for a North Dakota loss, a corporation must make the election on the original return that was timely filed for the year in which the loss was incurred. If an election is not made, the loss **must** be carried back.

For taxable years beginning before January 1, 1993.

- If a corporation incurs a state loss, in the same year it incurs a federal loss, the loss must be carried back and carried forward in the same manner as elected for federal purposes. Consequently, a federal election to forego the carryback period also applies to the state loss.

- If a corporation incurs a state loss, but **no** federal net operating loss, the loss may be carried back and carried forward for the same period as a federal loss. The corporation may elect to forego the carryback period and carry forward the entire state loss. A corporation must make an election to carryforward the loss with an original return that is timely filed for the year in which the loss was incurred. If an election is not made, the loss **must** be carried back.

Line 20

North Dakota law provides for certain tax credits to a corporation. These credits may have limits and carryback/carryforward provisions. Refer to the corporation income tax booklet for the year being amended for instructions pertaining to these credits. Attach an explanation for all changes to credits.

Lines 23a and 24a

The current provisions for interest and penalty are outlined on the back page of this form.

North Dakota
Amended Corporation Income Tax Return
(Please detach this sheet and keep for future reference)
(See Reverse side for Interest and Penalty Provisions)

The following "Time for Filing" requirements have been summarized from the North Dakota Century Code. We have attempted to discuss the most common situations where an amended return would be necessary. However, if a situation arises that is not discussed below, refer to the North Dakota Century Code for the year being amended or contact the Office of State Tax Commissioner at 701-328-2046.

For Taxable Years Beginning After December 31, 1990.

- Form 40X must be filed within three years after the due date of the return or within three years after the return was filed, whichever period expires later, if a refund is requested.
- The time period for assessment of a taxpayer whose principal place for managing or directing a business is **inside** North Dakota is three years after the due date of the return or three years after the return was filed, whichever period expires later.

- The time period for assessment or refund of North Dakota corporation income tax of an **out-of-state** taxpayer is as follows:

<u>For taxable years or periods beginning after:</u>	<u>Time period</u>
December 31, 1990	Five Years
December 31, 1992	Four Years
December 31, 1994	Three Years

- If North Dakota taxable income or North Dakota income tax liability changes by an amount in excess of twenty-five percent, any refund may be claimed within six years after the due date of the return, or six years after the return was filed, whichever period expires last. (A similar provision related to assessments was not changed and may be found in N.D.C.C. § 57-38-38).
- The filing of an amended return before the expiration of the time limitations provided for in N.D.C.C. ch. 57-38 allows the tax commissioner two years after the amended state income tax return is filed to audit the state income tax return and assess any

additional state income tax found to be due, even though other time periods prescribed in N.D.C.C. ch. 57-38 for the assessment of tax may have expired. This time period does not limit or restrict any other time period prescribed in N.D.C.C. ch. 57-38 for the assessment of tax that has not expired at the end of the two-year period.

- Where a loss is being carried back from a taxable year beginning **after** December 31, 1986, Form 40X must be filed within three years after the original due date for the taxable year in which the loss occurred, including extensions.
- The time period for reporting a change in federal taxable income or federal income tax liability to the Office of State Tax Commissioner is extended from thirty (30) to ninety (90) days from the final determination.

If the federal change results in additional state income tax due and:

- the change is reported within ninety (90) days of final determination, the time period for issuing an assessment is limited to two (2) years from the date the change is reported, provided all other time periods for assessment have expired.
- the change is **not** reported within ninety (90) days of final determination, the time period for issuing an assessment is unlimited.

If the federal change results in an overpayment of state income tax and:

- the change is reported within ninety (90) days of final determination, the

overpayment plus interest accrued through the date of payment will be refunded.

- the change is **not** reported within ninety (90) days but is reported within two (2) years of final determination (or within any other unexpired time period for refund), the overpayment plus interest accrued through ninety (90) days after final determination will be refunded.
- the change is **not** reported within ninety (90) days, is not reported within two (2) years after final determination, and provided all other time periods for refund have expired, the Office of State Tax Commissioner must deny any claim for credit or refund.

- If all other time periods for assessment or refund have expired, an assessment or claim for credit or refund based on a change in federal taxable income or federal income tax liability is limited to adjustments directly attributable to the federal change.
- If a taxpayer fails to file a return within three years after the due date of the return, no credit or refund of overpaid estimated income tax may be made.
- If a taxpayer consents to an extension of time for the assessment of North Dakota income tax, the period of time for filing a claim for refund is similarly extended.

For Taxable Years Beginning After December 31, 1984 And Before January 1, 1991

- Form 40X must be filed within three years after the due date of the return or within three years after the return was filed, whichever period expires later, if a refund is requested.
- The time period for assessment of a taxpayer whose principal place for managing or directing a business is **inside** North Dakota is three years after the due date of the return or three years after the return was filed, whichever period expires later.
- The time period for assessment of a taxpayer whose principal place for managing or directing a business is **outside** North Dakota is six years after the due date of the return or six years after the return was filed, whichever period expires later.

- If there is a change in North Dakota taxable income or adjusted federal income tax liability by an amount which is in excess of twenty-five percent of the amount of taxable income stated in the return as filed, any additional tax determined due may be assessed any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later.
- The filing of an amended return before the expiration of the time limitation provided for in N.D.C.C. ch. 57-38 shall add an additional time period of two years for assessment of a deficiency or the issuance of a credit or refund to the time limitation still remaining as of the date of filing of the amended return.
- Where a loss is being carried back from a taxable year beginning before January 1, 1987, Form 40X must be filed within the period which

ends with the fifteenth day of the fortieth month following the end of the taxable year in which the net operating loss occurred.

- Where a loss is being carried back from a taxable year beginning **after** December 31, 1986, Form 40X must be filed within three years after the original due date for the taxable year in which the loss occurred, including extensions.
- The time period for reporting a change in federal taxable income or federal income tax liability to the Office of State Tax Commissioner is thirty days after final determination of any change made by the Internal Revenue Service. Failure to file within this time frame will suspend the running of the statute of limitations for assessment.

North Dakota Amended Corporation Income Tax Return

Calculation of interest and penalty for income tax purposes: Comparison of rates and calculation methods for pre-'98 years with those for 1998 and subsequent years

This table shows (in the right hand column) the interest and penalty rates and calculation methods in effect for taxable years beginning after December 31, 1997, as a result of passage of Senate Bill 2102 by the 1999 North Dakota Legislative Assembly. Because the rates and calculation methods in effect for taxable years beginning before January 1, 1998, remain in effect for those taxable years, you'll have to keep track of different rates and calculation methods. This table will help you do that. Please note that for refunds arising from loss years beginning after December 31, 1997, interest shall start accruing from the due date of the loss year to the date the refund is issued; however, no interest shall accrue if the refund is issued within forty-five days after the date the amended return is filed.

- **SECTION 1** provides an overview of the rates and the general statutory authority
- **SECTION 2** shows the rates and calculation methods applicable to refunds and the specific statutory authority
- **SECTION 3** provides an overview of penalty provisions and the general statutory authority

		Pre-'98 years Taxable years beginning before January 1, 1998	1998 and subsequent years Taxable years beginning after December 31, 1997	
SECTION 1: Interest rates at-a-glance				
Refunds [Generally, N.D.C.C. § 57-38-35.2]	10% per annum (.000277/day)		1% per month (or fraction of a month)	
Payment of tax after due date, or additional tax due because of audit or other reason [Generally, N.D.C.C. § 57-38-45(1)]	1% per month (or fraction of a month)		1% per month (or fraction of a month)	
Extension of time to file [Generally, N.D.C.C. § 57-38-45(1)]	12% per annum (.000333/day)		12% per annum (.000333/day)	
Nonpayment, late payment or underpayment of estimated tax [Generally, N.D.C.C. §§ 57-38-45(1) and 57-38-62(3)]	12% per annum (.000333/day)		12% per annum (.000333/day)	
SECTION 2: Interest on a refund				
Description of provision	Rate	Calculation	Rate	Calculation
Refund on original return attributable to an overpayment of withholding or estimated tax [N.D.C.C. § 57-38-35.2(1)(a)]	10% per annum (.000277/day)	Starts accruing after 60 days from the later of (1) the due date (without extension) of the original return or (2) the date the original return is filed, and stops accruing on the date the refund is issued.	1% per month or fraction of a month	Starts accruing after 45 days from the later of (1) the due date (without extension) of the original return or (2) the date the original return is filed, and stops accruing on the date the refund is issued.
Refund attributable to an amended return filed for reasons other than a net operating loss [N.D.C.C. § 57-38-35.2(1)(b)]	10% per annum (.000277/day)	Starts accruing after 60 days from the later of (1) the due date (without extension) of the original return, (2) the date the original return was filed, or (3) the date the tax was fully paid, and stops accruing on the date the refund is issued.	1% per month or fraction of a month	Accrues from the due date (without extension) of the original return to the date the refund is issued, excluding the month in which the due date falls.
Refund attributable to an amended return filed for a net operating loss carryback or a capital loss carryback. [N.D.C.C. § 57-38-35.2(1)(c)]	10% per annum (.000277/day)	Starts accruing after 60 days from the date the amended return is filed, and stops accruing on the date the refund is issued.	1% per month or fraction of a month.	If the refund is issued within 45 days of the date the amended return is filed, no interest accrues. If the refund is not issued within 45 days of the date the amended return is filed, interest accrues from the due date (without extension) of the original return for the year in which the loss was incurred to the date the refund is issued.
SECTION 3: Penalty				
Description of provision	Rate	Calculation	Rate	Calculation
Penalty on late payments of tax due amounts [N.D.C.C. §§ 57-38-38 and 57-38-45]	5% of the tax or \$5.00, whichever is greater	If the federal carryback of a net operating loss or investment tax credit results in additional income tax due for state purposes, the penalty may be waived.	5% of the tax or \$5.00, whichever is greater	If the federal carryback of a net operating loss or investment tax credit results in additional income tax due for state purposes, the penalty may be waived.